

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

DUCCHIE BRIAN DALMAZZO

Registered Nurse License Applicant

Respondent

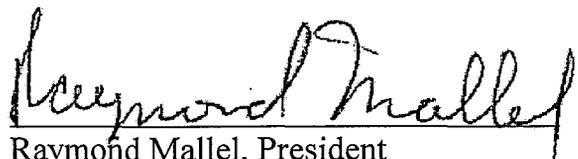
Case No. 2013-285

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on **March 18, 2013**.

IT IS SO ORDERED **February 16, 2013**.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 SYDNEY M. MEHRINGER
Deputy Attorney General
4 State Bar No. 245282
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Attorneys for Complainant
7

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

12 **DUCCHIE BRIAN DALMAZZO**
13 **6306 Whitsett Ave.**
North Hollywood, CA 91606
14 **Applicant for Registered Nurse License**

15 Respondent.

Case No. 2013-285

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled
18 proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") is the Executive Officer of the Board
21 of Registered Nursing. She brought this action solely in her official capacity and is represented in
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Sydney M.
23 Mehringer, Deputy Attorney General.

24 2. Respondent Ducchie Brian Dalmazzo ("Respondent") is represented in this
25 proceeding by attorney Grace E. Ayers, whose address is: Law Offices of Ross Howell Sobell,
26 15260 Ventura Blvd., Suite 1200, Sherman Oaks, CA 91403.

27 3. On or about November 21, 2011, Respondent filed an application dated October 17,
28 2011, with the Board of Registered Nursing to obtain a Registered Nurse License.

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JURISDICTION

4. Statement of Issues No. 2013-285 was filed before the Board of Registered Nursing (“Board”), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on October 15, 2012.

5. A copy of Statement of Issues No. 2013-285 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 2013-285. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 2013-285.

10. Respondent agrees that his Application for Registered Nurse License is subject to denial and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

///

1 CONTINGENCY

2 11. This stipulation shall be subject to approval by the Board of Registered Nursing.
3 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
4 Registered Nursing may communicate directly with the Board regarding this stipulation and
5 settlement, without notice to or participation by Respondent or his counsel. By signing the
6 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
7 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
8 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
9 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
10 action between the parties, and the Board shall not be disqualified from further action by having
11 considered this matter.

12 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
13 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
14 effect as the originals.

15 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
16 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
17 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
18 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
19 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
20 writing executed by an authorized representative of each of the parties.

21 14. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Board may, without further notice or formal proceeding, issue and enter the following
23 Disciplinary Order:

24 DISCIPLINARY ORDER

25 IT IS HEREBY ORDERED the application of Respondent Ducchie Brian Dalmazzo for
26 licensure is hereby granted. Upon successful completion of the licensure examination and all
27 other licensing requirements, a license shall be issued to Respondent. Said license shall
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1 immediately be revoked, the order of revocation stayed and Respondent placed on probation for a
2 period of three (3) years on the following conditions:

3 **Severability Clause.** Each condition of probation contained herein is a separate and
4 distinct condition. If any condition of this Order, or any application thereof, is declared
5 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
6 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
7 and enforceable to the fullest extent permitted by law.

8 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
9 detailed account of any and all violations of law shall be reported by Respondent to the Board in
10 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with
11 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
12 45 days of the effective date of the decision, unless previously submitted as part of the licensure
13 application process.

14 **Criminal Court Orders:** If Respondent is under criminal court orders, including
15 probation or parole, and the order is violated, this shall be deemed a violation of these probation
16 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

17 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with
18 the conditions of the Probation Program established by the Board and cooperate with
19 representatives of the Board in its monitoring and investigation of the Respondent's compliance
20 with the Board's Probation Program. Respondent shall inform the Board in writing within no
21 more than 15 days of any address change and shall at all times maintain an active, current license
22 status with the Board, including during any period of suspension.

23 Upon successful completion of probation, Respondent's license shall be fully restored.

24 3. **Report in Person.** Respondent, during the period of probation, shall appear in
25 person at interviews/meetings as directed by the Board or its designated representatives.

26 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
27 practice as a registered nurse outside of California shall not apply toward a reduction of this
28 probation time period. Respondent's probation is tolled, if and when he resides outside of

1 California. Respondent must provide written notice to the Board within 15 days of any change of
2 residency or practice outside the state, and within 30 days prior to re-establishing residency or
3 returning to practice in this state.

4 Respondent shall provide a list of all states and territories where he has ever been licensed
5 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
6 information regarding the status of each license and any changes in such license status during the
7 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
8 license during the term of probation.

9 **5. Submit Written Reports.** Respondent, during the period of probation, shall submit
10 or cause to be submitted such written reports/declarations and verification of actions under
11 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
12 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
13 Respondent shall immediately execute all release of information forms as may be required by the
14 Board or its representatives.

15 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
16 state and territory in which he has a registered nurse license.

17 **6. Function as a Registered Nurse.** Respondent, during the period of probation, shall
18 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
19 6 consecutive months or as determined by the Board.

20 For purposes of compliance with the section, "engage in the practice of registered nursing"
21 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
22 non-direct patient care position that requires licensure as a registered nurse.

23 The Board may require that advanced practice nurses engage in advanced practice nursing
24 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

25 If Respondent has not complied with this condition during the probationary term, and
26 Respondent has presented sufficient documentation of his good faith efforts to comply with this
27 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
28 extension of Respondent's probation period up to one year without further hearing in order to

1 comply with this condition. During the one year extension, all original conditions of probation
2 shall apply.

3 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
4 prior approval from the Board before commencing or continuing any employment, paid or
5 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
6 performance evaluations and other employment related reports as a registered nurse upon request
7 of the Board.

8 Respondent shall provide a copy of this Decision to his employer and immediate
9 supervisors prior to commencement of any nursing or other health care related employment.

10 In addition to the above, Respondent shall notify the Board in writing within seventy-two
11 (72) hours after he obtains any nursing or other health care related employment. Respondent
12 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
13 regardless of cause, from any nursing, or other health care related employment with a full
14 explanation of the circumstances surrounding the termination or separation.

15 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
16 Respondent's level of supervision and/or collaboration before commencing or continuing any
17 employment as a registered nurse, or education and training that includes patient care:

18 Respondent shall practice only under the direct supervision of a registered nurse in good
19 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
20 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
21 approved.

22 Respondent's level of supervision and/or collaboration may include, but is not limited to the
23 following:

24 (a) Maximum - The individual providing supervision and/or collaboration is present in
25 the patient care area or in any other work setting at all times.

26 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
27 care unit or in any other work setting at least half the hours Respondent works.

28 (c) Minimum - The individual providing supervision and/or collaboration has person-to-

1 person communication with Respondent at least twice during each shift worked.

2 (d) Home Health Care - If Respondent is approved to work in the home health care
3 setting, the individual providing supervision and/or collaboration shall have person-to-person
4 communication with Respondent as required by the Board each work day. Respondent shall
5 maintain telephone or other telecommunication contact with the individual providing supervision
6 and/or collaboration as required by the Board during each work day. The individual providing
7 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
8 patients' homes visited by Respondent with or without Respondent present.

9 **9. Employment Limitations.** Respondent shall not work for a nurse's registry, in any
10 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
11 or for an in-house nursing pool.

12 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
13 registered nursing supervision and other protections for home visits have been approved by the
14 Board. Respondent shall not work in any other registered nursing occupation where home visits
15 are required.

16 Respondent shall not work in any health care setting as a supervisor of registered nurses.
17 The Board may additionally restrict Respondent from supervising licensed vocational nurses
18 and/or unlicensed assistive personnel on a case-by-case basis.

19 Respondent shall not work as a faculty member in an approved school of nursing or as an
20 instructor in a Board approved continuing education program.

21 Respondent shall work only on a regularly assigned, identified and predetermined
22 worksite(s) and shall not work in a float capacity.

23 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
24 request documentation to determine whether there should be restrictions on the hours of work.

25 **10. Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and
26 successfully complete a course(s) relevant to the practice of registered nursing no later than six
27 months prior to the end of his probationary term.

28 Respondent shall obtain prior approval from the Board before enrolling in the course(s).

1 Respondent shall submit to the Board the original transcripts or certificates of completion for the
2 above required course(s). The Board shall return the original documents to Respondent after
3 photocopying them for its records.

4 **11. Violation of Probation.** If Respondent violates the conditions of his probation, the
5 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
6 and impose the stayed discipline (revocation/suspension) of Respondent's license.

7 If during the period of probation, an accusation or petition to revoke probation has been
8 filed against Respondent's license or the Attorney General's Office has been requested to prepare
9 an accusation or petition to revoke probation against Respondent's license, the probationary
10 period shall automatically be extended and shall not expire until the accusation or petition has
11 been acted upon by the Board.

12 **12. License Surrender.** During Respondent's term of probation, if he ceases practicing
13 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
14 Respondent may surrender his license to the Board. The Board reserves the right to evaluate
15 Respondent's request and to exercise its discretion whether to grant the request, or to take any
16 other action deemed appropriate and reasonable under the circumstances, without further hearing.
17 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
18 subject to the conditions of probation.

19 Surrender of Respondent's license shall be considered a disciplinary action and shall
20 become a part of Respondent's license history with the Board. A registered nurse whose license
21 has been surrendered may petition the Board for reinstatement no sooner than the following
22 minimum periods from the effective date of the disciplinary decision:

23 (1) Two years for reinstatement of a license that was surrendered for any reason other
24 than a mental or physical illness; or

25 (2) One year for a license surrendered for a mental or physical illness.

26 **13. Physical Examination.** Within 45 days of the effective date of this Decision,
27 Respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician
28 assistant, who is approved by the Board before the assessment is performed, submit an

1 assessment of the Respondent's physical condition and capability to perform the duties of a
2 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
3 medically determined, a recommended treatment program will be instituted and followed by the
4 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
5 to the Board on forms provided by the Board.

6 If Respondent is determined to be unable to practice safely as a registered nurse, the
7 licensed physician, nurse practitioner, or physician assistant making this determination shall
8 immediately notify the Board and Respondent by telephone, and the Board shall request that the
9 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
10 immediately cease practice and shall not resume practice until notified by the Board. During this
11 period of suspension, Respondent shall not engage in any practice for which a license issued by
12 the Board is required until the Board has notified Respondent that a medical determination
13 permits Respondent to resume practice. This period of suspension will not apply to the reduction
14 of this probationary time period.

15 If Respondent fails to have the above assessment submitted to the Board within the 45-day
16 requirement, Respondent shall immediately cease practice and shall not resume practice until
17 notified by the Board. This period of suspension will not apply to the reduction of this
18 probationary time period. The Board may waive or postpone this suspension only if significant,
19 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
20 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
21 Only one such waiver or extension may be permitted.

22 **14. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

23 Respondent, at his expense, shall successfully complete during the probationary period or shall
24 have successfully completed prior to commencement of probation a Board-approved
25 treatment/rehabilitation program of at least six months duration. As required, reports shall be
26 submitted by the program on forms provided by the Board. If Respondent has not completed a
27 Board-approved treatment/rehabilitation program prior to commencement of probation,
28 Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.

1 If a program is not successfully completed within the first nine months of probation, the Board
2 shall consider Respondent in violation of probation.

3 Based on Board recommendation, each week Respondent shall be required to attend at least
4 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
5 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
6 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
7 added. Respondent shall submit dated and signed documentation confirming such attendance to
8 the Board during the entire period of probation. Respondent shall continue with the recovery plan
9 recommended by the treatment/rehabilitation program or a licensed mental health examiner
10 and/or other ongoing recovery groups.

11 **15. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
12 completely abstain from the possession, injection or consumption by any route of all controlled
13 substances and all psychotropic (mood altering) drugs, including alcohol, except when the same
14 are ordered by a health care professional legally authorized to do so as part of documented
15 medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14)
16 days, by the prescribing health professional, a report identifying the medication, dosage, the date
17 the medication was prescribed, the Respondent's prognosis, the date the medication will no
18 longer be required, and the effect on the recovery plan, if appropriate.

19 Respondent shall identify for the Board a single physician, nurse practitioner or physician
20 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
21 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
22 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
23 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
24 considered addictive have been prescribed, the report shall identify a program for the time limited
25 use of any such substances.

26 The Board may require the single coordinating physician, nurse practitioner, or physician
27 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
28 medicine.

1 **16. Submit to Tests and Samples.** Respondent, at his expense, shall participate in a
2 random, biological fluid testing or a drug screening program which the Board approves. The
3 length of time and frequency will be subject to approval by the Board. Respondent is responsible
4 for keeping the Board informed of Respondent's current telephone number at all times.
5 Respondent shall also ensure that messages may be left at the telephone number when he is not
6 available and ensure that reports are submitted directly by the testing agency to the Board, as
7 directed. Any confirmed positive finding shall be reported immediately to the Board by the
8 program and Respondent shall be considered in violation of probation.

9 In addition, Respondent, at any time during the period of probation, shall fully cooperate
10 with the Board or any of its representatives, and shall, when requested, submit to such tests and
11 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
12 hypnotics, dangerous drugs, or other controlled substances.

13 If Respondent has a positive drug screen for any substance not legally authorized and not
14 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
15 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
16 practice pending the final decision on the petition to revoke probation or the accusation. This
17 period of suspension will not apply to the reduction of this probationary time period.

18 If Respondent fails to participate in a random, biological fluid testing or drug screening
19 program within the specified time frame, Respondent shall immediately cease practice and shall
20 not resume practice until notified by the Board. After taking into account documented evidence
21 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
22 suspend Respondent from practice pending the final decision on the petition to revoke probation
23 or the accusation. This period of suspension will not apply to the reduction of this probationary
24 time period.

25 **17. Mental Health Examination.** Respondent shall, within 45 days of the effective date
26 of this Decision, have a mental health examination including psychological testing as appropriate
27 to determine his capability to perform the duties of a registered nurse. The examination will be
28 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by

1 the Board. The examining mental health practitioner will submit a written report of that
2 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
3 Recommendations for treatment, therapy or counseling made as a result of the mental health
4 examination will be instituted and followed by Respondent.

5 If Respondent is determined to be unable to practice safely as a registered nurse, the
6 licensed mental health care practitioner making this determination shall immediately notify the
7 Board and Respondent by telephone, and the Board shall request that the Attorney General's
8 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
9 practice and may not resume practice until notified by the Board. During this period of
10 suspension, Respondent shall not engage in any practice for which a license issued by the Board
11 is required, until the Board has notified Respondent that a mental health determination permits
12 Respondent to resume practice. This period of suspension will not apply to the reduction of this
13 probationary time period.

14 If Respondent fails to have the above assessment submitted to the Board within the 45-day
15 requirement, Respondent shall immediately cease practice and shall not resume practice until
16 notified by the Board. This period of suspension will not apply to the reduction of this
17 probationary time period. The Board may waive or postpone this suspension only if significant,
18 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
19 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
20 Only one such waiver or extension may be permitted.

21 18. **Therapy or Counseling Program.** Respondent, at his expense, shall participate in
22 an on-going counseling program until such time as the Board releases him from this requirement
23 and only upon the recommendation of the counselor. Written progress reports from the counselor
24 will be required at various intervals.

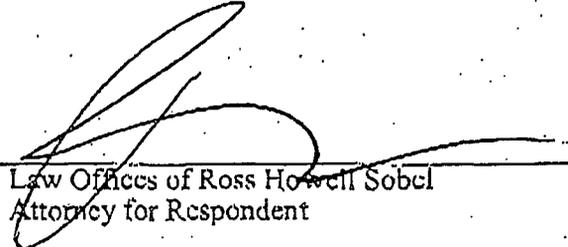
25 ACCEPTANCE

26 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
27 discussed it with my attorney, Grace E. Ayers. I understand the stipulation and the effect it will
28 have on my Applicant for Registered Nurse License. I enter into this Stipulated Settlement and

1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the Board of Registered Nursing.

3
4 DATED: 11/30/12 
5 DUCCHIE BRIAN DALMAZZO
6 Respondent

7 I have read and fully discussed with Respondent Ducchie Brian Dalmazzo the terms and
8 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
9 I approve its form and content.

10 DATED: 11/30/12 
11 Law Offices of Ross Howell Sobel
12 Attorney for Respondent

13 **ENDORSEMENT**

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
16 Affairs.

17 Dated: _____ Respectfully submitted,
18
19 KAMALA D. HARRIS
20 Attorney General of California
21 KAREN B. CHIAPPELLE
22 Supervising Deputy Attorney General

23 SYDNEY M. MEHRINGER
24 Deputy Attorney General
25 *Attorneys for Complainant*

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1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the Board of Registered Nursing.

3
4 DATED: _____

DUCCHIE BRIAN DALMAZZO
Respondent

5
6 I have read and fully discussed with Respondent Ducchie Brian Dalmazzo the terms and
7 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
8 I approve its form and content.

9
10 DATED: _____

Law Offices of Ross Howell Sobel
Attorney for Respondent

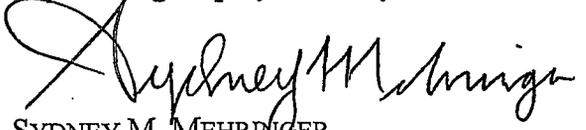
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13 **ENDORSEMENT**

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
16 Affairs.

17
18 Dated: *December 4, 2012*

Respectfully submitted,

19 KAMALA D. HARRIS
Attorney General of California
20 KAREN B. CHAPPELLE
Supervising Deputy Attorney General

21 
22 SYDNEY M. MEHRINGER
23 Deputy Attorney General
24 *Attorneys for Complainant*

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Exhibit A

Statement of Issues No. 2013-285

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 SYDNEY M. MEHRINGER
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

Case No. *2013-285*

12 **DUCCHIE BRIAN DALMAZZO**

STATEMENT OF ISSUES

13 Respondent.

14
15 Complainant alleges:

16 **PARTIES**

17 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely
18 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department
19 of Consumer Affairs.

20 2. On or about November 21, 2011, the Board of Registered Nursing ("Board") received
21 an application for Licensure by Examination as a Registered Nurse License from Ducchie Brian
22 Dalmazzo ("Respondent"). On or about October 17, 2011, Respondent certified under penalty of
23 perjury to the truthfulness of all statements, answers, and representations in the application. The
24 Board denied the application on March 2, 2012.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code ("Code") unless
28 otherwise indicated.

1 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
2 made suspending the imposition of sentence, irrespective of a subsequent order under the
3 provisions of Section 1203.4 of the Penal Code. "

4 6. Code section 2736 provides, in pertinent part, that the Board may deny a license when
5 it finds that the applicant has committed any acts constituting grounds for denial of licensure
6 under section 480 of that Code.

7 7. Code section 2761 states, in pertinent part:

8 "The board may take disciplinary action against a certified or licensed nurse or deny an
9 application for a certificate or license for any of the following:

10 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

11

12 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
13 functions, and duties of a registered nurse, in which event the record of the conviction shall be
14 conclusive evidence thereof."

15 8. Code section 2762 states, in pertinent part:

16 In addition to other acts constituting unprofessional conduct within the meaning of this
17 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
18 following:

19

20 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
21 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
22 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
23 himself or herself, any other person, or the public or to the extent that such use impairs his or her
24 ability to conduct with safety to the public the practice authorized by his or her license.

25 "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-
26 administration of any of the substances described in subdivisions (a) and (b) of this section, or the
27 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
28 of this section, in which event the record of the conviction is conclusive evidence thereof. "

1 **REGULATORY PROVISIONS**

2 9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

3 "A conviction or act shall be considered to be substantially related to the qualifications,
4 functions or duties of a registered nurse if to a substantial degree it evidences the present or
5 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
6 safety, or welfare."

7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 **(Convictions of Substantially Related Crimes)**

9 10. Respondent's application is subject to denial under Code sections 2761, subdivision
10 (f) and 480, subdivision (a)(1), in that Respondent was convicted of crimes, as follows:

11 a. On or about July 5, 2006, after pleading nolo contendere, Respondent was convicted
12 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
13 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding
14 entitled *The People of the State of California v. Duchie Brian Dalmazzo* (Super. Ct. Los Angeles
15 County, 2006, No. 6SR03029). The Court sentenced Respondent to serve 4 days in Los Angeles
16 County Jail and placed him on 60 months probation, with terms and conditions. The
17 circumstances surrounding the conviction are that on or about May 20, 2006, the California State
18 University Northridge Police Department initiated a traffic stop of Respondent's vehicle. While
19 speaking to Respondent, the officer detected a strong odor of an alcoholic beverage emitting from
20 the vehicle. Respondent was observed to have bloodshot, watery eyes. When asked how much
21 he had to drink, Respondent stated, "A couple of beers a few hours ago." Respondent was
22 subsequently arrested for violating Vehicle Code section 23152, subdivision (a) [driving under
23 the influence of alcohol or drugs]. During the booking procedure, Respondent submitted to a
24 breath test that resulted in a breath-alcohol content level of 0.10% and .09%.

25 b. On or about October 4, 2004, after pleading nolo contendere, Respondent was
26 convicted of one misdemeanor count of violating Vehicle Code section 23103 [reckless driving].
27 in the criminal proceeding entitled *The People of the State of California v. Duchie Brian*
28 *Dalmazzo* (Super. Ct. Los Angeles County, 2004, No. 4VN00728). The Court placed Respondent

1 on 36 months probation, with terms and conditions. The circumstances surrounding the
2 conviction are that on or about February 8, 2004, Respondent drove a vehicle while having
3 0.09%, by weight, of alcohol in his blood.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(Acts Warranting Denial of Licensure)**

6 11. Respondent's application is subject to denial under Code section 480 subdivisions
7 (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a licentiate would be
8 grounds for suspension or revocation of his license, as follows:

9 a. Respondent was convicted of crimes substantially related to the qualifications,
10 functions, or duties of a registered nurse which to a substantial degree evidences his present or
11 potential unfitness to perform the functions authorized by his license in a manner consistent with
12 the public health, safety, or welfare, in violation of Code sections 2761, subdivision (f) and 490,
13 in conjunction with California Code of Regulations, title 16, section 1444. Complainant refers to,
14 and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs
15 (a) and (b), inclusive, as though set forth fully.

16 b. Respondent used alcoholic beverages to an extent or in a manner dangerous or
17 injurious to himself, another person, and the public, in violation of Code sections 2761,
18 subdivision (a) and 2762, subdivision (b). Complainant refers to, and by this reference
19 incorporates, the allegations set forth above in paragraph 10, subparagraphs (a) and (b), inclusive,
20 as though set forth fully.

21 c. Respondent was convicted of crimes involving the consumption of alcohol, in
22 violation of Code sections 2761, subdivision (a) and 2762, subdivision (c). Complainant refers to,
23 and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs
24 (a) and (b), inclusive, as though set forth fully.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Registered Nursing issue a decision:
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1. Denying Ducchie Brian Dalmazzo's application for Licensure by Examination, as a Registered Nurse, and
2. Taking such other and further action as deemed necessary and proper.

DATED: October 12, 2012


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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